

**MINUTES  
LESC MEETING  
FRIDAY, JANUARY 9, 2004**

Representative Rick Miera, Chair, called the Legislative Education Study Committee (LESC) meeting to order on January 9, 2004, at 9:03 a.m., State Capitol, Room 317, Santa Fe, New Mexico.

The following LESC members were present:

Representatives Rick Miera, Chair, Pauline J. Ponce, and Mimi Stewart; Senators Cynthia Nava, Vice Chair, and Mary Kay Papen.

The following LESC advisory members were present:

Representatives Kandy Cordova, Ron Godbey, Roberto J. “Bobby” Gonzales, and Richard D. Vigil; and Senators Mark Boitano, Dianna J. Duran, Mary Jane M. Garcia, John Pinto, and Leonard Tsosie.

Upon a motion by Representative Ponce, seconded by Senator Papen, and acting as a subcommittee in the absence of a quorum, the committee unanimously approved the agenda as presented.

**RECOMMENDATIONS OF THE LESC AD HOC SUBCOMMITTEE ON  
GOVERNANCE OF PUBLIC SCHOOLS**

Representative Rick Miera recognized Ms. Jonelle Maison, Legislative Council Service staff, to review draft legislation based upon the recommendations of the LESC Ad Hoc Subcommittee on Governance of Public Schools. He also introduced Dr. Veronica C. García, Secretary Designate of Public Education, and Ms. Arlene Strumor, Public Education Department (PED) legal counsel, to comment on the draft legislation.

Ms. Maison stated that there were two draft bills for the committee to consider. The first, which contains an emergency clause, would repeal the transition legislation (Laws 2003, Chapter 143, Sections 1 through 3), commonly referred to as SB 911. The second, which does not contain an emergency clause, would:

- transfer the powers and duties of the State Board of Education (SBE) and the State Superintendent of Public Instruction to the Public Education Department (PED) and the Secretary of Public Education;
- define the powers and duties of the Public Education Commission (PEC); and
- repeal SB 911, enacted in 2003.

Ms. Maison explained that SB 911:

- included temporary provisions, in effect until July 1, 2004, directing that all statutory references to SBE or the State Superintendent of Public Instruction mean the Secretary of Public Education or PED and prohibiting the Secretary of Public Education from establishing new public school policy without first consulting with PEC; and
- repealed several articles of the *Public School Code*, effective July 1, 2004, including those dealing with the code's general provisions, SBE powers, courses of instruction and school programs, and instructional materials.

Representative Miera asked Ms. Maison to explain to the committee what would happen if neither draft bill was enacted by the Legislature. She stated that, in that case although the *Constitution of New Mexico* gives PED fiscal and programmatic oversight of the public schools, the PEC would be left with no duties and all major areas of the *Public School Code*, other than the *Public School Finance Act*, would be repealed. She further indicated that as a consequence, PED might have some difficulty carrying out its constitutional responsibilities in the absence of statutory guidelines.

After reminding the committee members that they had reviewed the first version of the draft governance bill at the December meeting, Representative Miera requested that Ms. Maison review the draft governance bill (dated January 7, 2004) section by section with the committee and stated that the committee was free to ask questions throughout the process; however, noting that the LESC was acting as a subcommittee, Representative Miera stated that any decisions made at this meeting would have to be approved by the full committee at its January 19 meeting.

Ms. Maison stated that the first 12 sections of the bill, entitled the *Public Education Department Act*, were modeled after the statutes governing all of the other cabinet-level departments. If enacted by the 2004 Legislature, she continued, the sections would be compiled in Chapter 9, *Executive Department*, rather than in Chapter 22, *Public Schools*, where the powers and duties of SDE and SBE had been compiled.

Because Secretary Designate García had expressed a need for additional time to determine the best way to reorganize PED, Ms. Maison noted that Section 4, which creates PED as a cabinet department, does not list any specific divisions other than those already in statute, including Indian Education, Vocational Education, Vocational Rehabilitation, and the Instructional

Material Bureau. Instead, Section 4 directs the Secretary of Public Education to “make recommendations to the first session of the forty-seventh legislature on the statutory organization of the department,” thus giving the secretary a year to develop recommendations.

Ms. Maison noted that PED also had some concerns about Section 9, which creates the PEC, and stated that Ms. Strumor had some policy suggestions that PED would like the committee to consider for inclusion in the final draft of the bill.

Ms. Strumor stated that there were two paragraphs in section 9, A and D, about which PED had some reservations. Noting that Section 9A states in part that “the commission shall be administratively attached to the department, with administrative staff provided by the department,” Ms. Strumor explained that PED was concerned that the language as written might lead PEC to believe that all PED staff were at its disposal. Secretary Designate García suggested that language requiring PEC to request staff services through the Secretary be included. Upon a motion by Senator Nava, seconded by Representative Stewart, the LESC, acting as a subcommittee, voted unanimously to recommend to the full committee that the following sentence be added to Section 9A: “Additional requests for staff services shall be made through the secretary.”

Ms. Strumor stated that PED’s concern with Section 9D, which requires PEC to meet quarterly and also specifies that the PEC chairman must call a meeting at the request of a majority of the members, was that frequent meetings could have a major impact on staff time and department resources. She and Secretary Designate García suggested that additional meetings be called by the Secretary rather than the PEC chairman. Several committee members noted that PEC was an elected body and expressed concern that an appointed official would thereby be given the sole authority to determine when the commission could hold additional meetings. Upon a motion by Representative Stewart, seconded by Senator Nava, the LESC, acting as a subcommittee, voted unanimously to recommend to the full committee that the language in Section 9D be amended as follows: “The chairman in consultation with the secretary shall call a meeting at the request of a majority of the members.”

Prior to resuming her review of the draft legislation, Ms. Maison noted that some of the remaining sections were designated as new but were really recombinations of sections already in law. She explained that, when sections of law are combined, the rules of drafting require that they be labeled as new even though the material they contain is not new. Committee members asked Ms. Maison to point out as she proceeded through the remainder of the sections those which were truly new and those which were recompiled.

Committee members briefly discussed the duties of PEC listed in Section 17, stating that it was important for PEC to consult with tribal authorities when working with PED to develop and update the five-year strategic plan for public elementary and secondary education.

Ms. Maison then concluded her discussion of the draft governance bill with a brief review of certain sections:

- Section 12 authorizes PED to cooperate with the federal government in the administration of education programs and designates PED as “the single state agency for the administration of any public school program when that designation is a condition of federal financial or other participation in the program under applicable federal law, rule or order.” The language parallels that used for other state agencies.

- Section 13 amends the definition section currently in the *Public School Code* by:
  - removing references to SBE;
  - adding the definition of “commission”;
  - changing references to the State Department of Education (SDE) to PED; and
  - adding the definition of “secretary.”
- Section 14 gives the general powers once attributable to SBE to the Secretary of Public Education and to PED.
- Section 15 repeals Section 22-2-2 (State board; duties) and enacts a new section that assigns many of the duties of the former SBE to PED and moves SDE duties found elsewhere in the current code to the new section.
- Section 16, Sections 20 through 22, and Section 24 are “cleanup”; references to SDE and SBE have been replaced with references to PED and PEC.
- Section 18 amends the assessment and accountability reporting requirements to include the state student identification number system and the reporting of graduation rates, both of which are in other sections of current statute.
- Section 19 amends local board duties to require a local school board to give prior approval for a privately sponsored and/or conducted educational program in a public school in the district. This responsibility is an SBE duty under current law.
- The duty currently in statute to develop a systematic framework for professional development has been reassigned from SBE to PED and set forth as a separate section of statute, Section 23, rather than incorporated into a list of PED duties.
- Section 25, which includes all of the temporary provisions in SB 911:
  - transfers all appropriations, money, personnel, records, property, contractual obligations, and other items from SDE to PED; and
  - changes all references to SBE and SDE in statute to PED and all references to the Superintendent of Public Instruction to the Secretary of Public Education.
- Section 26 is a temporary provision that recompiles Sections 22-8-30.1 (Adult basic education fund created) and 22-8-30.2 (Adult basic education; distribution of money; objective formula; commission on higher education; adoption of formula) into Chapter 21 NMSA 1978 (State and Private Education Institutions). The Commission on Higher Education (CHE) is created in Chapter 21. The 2003 Legislature moved the responsibility for Adult Basic Education from PED to CHE.
- Section 27 repeals:
  - SB 911;
  - Section 22-1-6.1 (High school graduation rates; reporting in accountability report);
  - Section 22-2-3, making SBE subject to the *Per Diem and Mileage Act*;
  - Section 22-2-4, regarding SBE officers and meetings;

- Section 22-2-5, allowing SBE to delegate administrative functions; and
- Section 22-2-6, listing SDE duties.

Seeing that there were no other questions from the committee, committee members made the following motions:

- Upon a motion by Representative Stewart, seconded by Senator Nava, the LESC, acting as a subcommittee, voted unanimously to recommend that the full committee endorse the draft bill to repeal the transition legislation, SB 911.
- Upon a motion by Representative Ponce, seconded by Senator Papen, the LESC, acting as a subcommittee, voted unanimously to recommend that the full committee endorse the draft education governance bill as amended.

### **IMPLEMENTATION OF THE THREE-TIERED LICENSURE EVALUATION SYSTEM**

Dr. Katherine Bilton, LESC staff, introduced Mr. James Ball, Director, Professional Licensure Unit, Public Education Department (PED), for a presentation on the status of the implementation of the three-tiered licensure evaluation system. Dr. Bilton also introduced Ms. Karen Couch, Superintendent, Moriarity Municipal Schools; Mr. Paul Benoit, Superintendent, Animas Public Schools; Dr. Elizabeth Everitt, Superintendent, Albuquerque Public Schools; and Mr. Louis D. Martinez, Superintendent, Las Cruces Public Schools, to discuss their districts' progress in implementing the three-tiered teacher licensure evaluation system.

Mr. Ball said that implementation of the three-tiered licensure system, including the evaluation component, is on schedule for full implementation on July 1, 2004. To assist in the implementation process, Mr. Ball explained, PED has formed the Three-tiered Implementation Council, with representation from key constituencies such as teachers, administrators, education associations, the LESC, and the Office of Education Accountability. This council has been meeting monthly, Mr. Ball said, and has established work groups to design the professional development dossier and the evaluation system. The dossier design work group, headed by Superintendent Karen Couch from Moriarty, will present its draft proposal to the public in the very near future; and the annual evaluation work group plans to have a system ready for review in February 2004. Other work groups on other specific topics will be formed and will operate during the spring of 2004 in order to implement the new evaluation and licensure advancement system by July 1, 2004.

Since May 2003, Mr. Ball stated, PED has conducted numerous sessions statewide to discuss the three-tiered licensure system in relation to the requirements of the federal *No Child Left Behind Act of 2001* (NCLB), to provide training, to answer questions, and to solicit public comments. Mr. Ball also noted that, in such a time of significant change in teacher licensure, especially concerning teacher salaries, there will be an ample supply of misinformation, rumors, and half-truths. Despite these difficulties, Mr. Ball noted, the public appears to be relieved, pleased, and satisfied with the new licensure system and the forthcoming changes.

One particular area of concern, Mr. Ball reported, is the emergency clause attached to the 2003 legislation, *Public School Reforms*, which implemented the three-tiered licensure framework and evaluation system, among other provisions. Because of the emergency clause, all the provisions of the bill became effective immediately upon the Governor's signature (April 4, 2003), long before PED could develop the "highly, objective, uniform statewide standard of [teacher] evaluation" (HOUSSE), which the law requires. A related provision was that the minimum salary of \$30,000 for Level I teachers could not go into effect until the State Board of Education (SBE) – now the Public Education Commission (PEC) – adopted the HOUSSE evaluation system. Therefore, Mr. Ball continued, immediately after the bill was signed PED staff began assembling a regulatory framework for HOUSSE with input from the field, particularly from two working conferences in Albuquerque in late April and again in June. The PED submitted the draft regulations for public comment during July and August, including 15 public hearings; and SBE adopted the rules on August 28, 2003.

Mr. Ball said that SBE adopted a rule, effective September 30, 2003, providing that the teacher advancement system already in use (the predecessor to HOUSSE) may continue to be used through June 30, 2004. As Mr. Ball explained, without such a rule teachers would have been unable to advance until July 2004, when the HOUSSE system is to be fully implemented. Furthermore, PED believed that such a rule would help call attention to the present Level III teaching license, which many teachers did not realize was available, despite its having been in existence for over 12 years. Finally, according to Mr. Ball, those teachers who are promoted under the pre-HOUSSE terms must be reevaluated under the HOUSSE system once it is implemented in order to maintain their promotions and to be eligible for the minimum salaries prescribed in statute. As prescribed in law, all teachers and administrators who hold teaching or administrative licenses on April 4, 2003 (the effective date of the 2003 reform legislation) must meet the new requirements for their level of licensure by September 1, 2006.

One consequence of this rule, Mr. Ball explained, was that a larger number of teachers than usual might move from Level II to Level III. Generally, he said, that number is approximately 200 teachers each year, who must present either a master's degree or National Board for Professional Teaching Standards certification, plus a good local evaluation and the recommendation of the district superintendent. To address this concern, Mr. Ball continued, PED Licensure Division has new data showing that, as of Tuesday, January 6, 2004, there were 3,866 working teachers at Level III, or 17 percent of the total teachers in school year 2002-2003. Discounting the usual 200 that advance every year as a matter of course, Mr. Ball calculated that 744 more teachers than usual have advanced to Level III. He also noted that there was a brief period of increased Level III licensure applications in October 2003; however, this increase has since leveled off. Mr. Ball added that teachers may continue to advance under the old system until July 1, 2004; but even if another 700 or 800 do so, Mr. Ball asserted that the total number of teachers holding a Level III license would be about 20 percent of the total teacher workforce.

Another point of concern, Mr. Ball explained, is the status of school librarians in terms of the three-tiered evaluation system. On one hand, he said, state law defines librarians not as teachers but as instructional support providers, who are not covered by the three-tiered system; on the other, PED rules require librarians to have valid teaching licenses. Therefore, Mr. Ball continued, the state's 300 school librarians are holding licenses that say they are teachers, they complete teacher preparation programs, and they take the same licensure tests that teachers take. Mr. Ball suggested that the Legislature, if it wants librarians to be treated like teachers, might consider amending statute to so provide; otherwise, the SBE rule would prevail and librarians would be excluded from both the benefits and the requirements of the three-tiered system.

Ms. Couch stated that Moriarty Municipal Schools has not experienced an unusually high number of teachers attempting to advance to Level III. She added that her review of the status of Level II teachers has determined that few who are eligible for Level III are interested in moving from Level II. Mr. Benoit said that, because Animas Public Schools has few Level III teaching positions available, teachers have little incentive to seek advancement. He noted that the Animas Public Schools is most interested in answering two questions related to teacher advancement: (1) is the teacher a “master teacher”; and (2) what are the duties of master teachers in relation to the licensure framework and HOUSSE evaluation system. Dr. Everitt stated that 41 percent of Albuquerque Public Schools (APS) teachers currently qualify as Level III teachers and that 200, or 4.0 percent, of the total number of Level II teachers have requested advancement to Level III. She said that this number of requests does not appear to present an unusual level of advancement. APS, she continued, is more concerned that the HOUSSE system will be implemented fairly and effectively.

Mr. Martinez began his testimony by referring to his presentation to the committee in December 2003, when he reported that data from 14 of 89 school districts indicated a potential shift of up to 78 percent of teachers from Level II to Level III. These data, he said, were exaggerated in order to support the request of the New Mexico School Superintendents Association that the committee delay any decision on a substitute for the Training and Experience (T&E) Index for at least a year. Continuing, Mr. Martinez noted that, superintendents statewide appear to be highly supportive of the three-tiered system. In Las Cruces Public Schools, 307 of 1,498 teachers (approximately 20 percent) are at Level III now. Of 256 more teachers who meet the existing criteria, 94 have applied for Level III status. If all 256 had applied, then the percentage would have increased well beyond the figure used by the contractors studying the T&E Index. Mr. Martinez also noted that, given the factors of attrition and retirement, it is unlikely that there will ever be 100 percent of teachers at Level III; and he emphasized that Las Cruces Public Schools is also concerned that the evaluation system be a truly standardized and uniform process.

### **Committee Discussion:**

In response to a committee member’s question whether Level III licensure would require teachers to work outside the classroom, Mr. Ball noted that SBE’s competencies are all centered on teachers in the classroom; nevertheless, he added, the law does refer to increased responsibilities like mentoring, curriculum development, and peer intervention. At present, according to Mr. Ball, neither statute nor SBE rule is clear on the point whether a Level III teacher may remain strictly in the classroom as a better classroom teacher or must assume extra duties.

Noting the salary variations among districts, one committee member observed that teachers in some districts are already or soon will be making more than the minimum salary without assuming additional duties, whereas in other districts that pay less teachers must assume additional duties to secure the higher salaries. Mr. Ball replied that the base salaries are set in statute and that the new system will not affect teachers already earning more than the minimums.

**APPROVAL OF PROPOSED LEGISLATION**  
**Legislative Education Study Committee**  
**Potential Legislation, 2004 Legislative Session**

**Issues for Consideration at the January 9, 2004 LESC Meeting**

***Endorsement of Potential Legislation***

Dr. Rindone directed the subcommittee's attention to a packet of proposed legislation for approval. She stated that the packet included proposed legislation the Legislative Education Study Committee (LESC), at its December meeting, had referred to the January 9, 2004 meeting for consideration, as well as those additional requests the committee had made.

Representative Miera stated that the members present would act as a subcommittee to the LESC and any actions taken would be presented to the full committee for review and ratification at its January 19, 2004 meeting.

**EDUCATION REFORM**

1. Amend the *Public School Code* to transfer the powers and duties of the State Board of Education and the State Superintendent of Public Instruction to the Public Education Department (PED) and the Secretary of Public Education, and to define the powers and duties of the Public Education Commission.

*After the subcommittee reviewed the legislation and after much discussion, on a motion by Representative Stewart, seconded by Senator Nava, the subcommittee voted unanimously to endorse item 1 with the following amendments:*

- *On a motion by Senator Nava, seconded by Representative Stewart, the subcommittee voted unanimously to insert on page 7, section 9, line 5, the term "administrative" after "with"; and insert after "committee." the sentence: "Additional requests for staff will be made through the secretary."*
- *On a motion by Senator Nava, seconded by Representative Stewart, the subcommittee voted unanimously to insert on page 7, section 9, line 19, "in consultation with the secretary" after "chairman".*
- *On a motion by Representative Stewart, seconded by Representative Ponce, the subcommittee voted unanimously to strike on page 10, section 13, line 25, "librarian" after "assistant" from the list of instructional support providers because librarians are required to be certified as teachers.*

*The subcommittee also requested that the Legislative Council Service review Section 22-10A-17, NMSA 1978, Instructional Support Provider Licenses, and other sections of law to determine if additional amendments are needed to identify librarians as teachers.*

*Representative Miera requested that LESC staff provide copies of the minutes of the LESC Ad Hoc Subcommittee on Governance of Public Schools interim meetings to Senator Boitano.*



2. Introduce legislation to repeal Chapter 143, Laws 2003 (SB 911), which repealed certain articles of the *Public School Code* and provided for the transition to PED upon adoption of Constitutional Amendment 1 of 2003.
3. Appropriate funds to establish a professional licensure and pay plan (including benefits) for educational assistants (EAs) in the Public School Funding Formula to enable New Mexico to meet the requirement of the federal *No Child Left Behind Act of 2001* that EAs who serve in Title I funded programs become certified as paraprofessionals by earning an associate of arts degree, completing a minimum of 48 postsecondary education units, or passing an approved competency exam.

*Senator Boitano requested that a report be prepared to compare the ratio of educational assistants to teachers in New Mexico with that of other states in the region and the nation.*

4. Amend statute to eliminate the individual writing assessment in grades 4, 6, and 8 and to require districts to apply writing assessment parameters to the extended response portion of the new criterion-referenced tests.

## **INSTRUCTIONAL MATERIAL**

5. Introduce a memorial to request PED to study the feasibility of using software programs to offer virtual instruction in dissection projects for the study of anatomy and physiology in middle and high school science courses in New Mexico.
6. Amend the *Instructional Material Law* to:
  - change the basis for determining the instructional material allocation from the 40<sup>th</sup> day of the current school year to the prior year 40-80-120-day averaged membership, direct PED to make direct payments to book depositories and/or publishers on behalf of each private school up to the amount of the private school's fiscal-year allocation, and allow PED to assume a 75 percent cash balance credit in determining the allocation to each eligible entity; and
  - allocate 95 percent of the appropriation by April 15, allow entities receiving the funds to use 100 percent for materials not on the multiple list, maintain the current adoption cycle to ensure the lowest available prices for materials, retain the depository system as an additional cost-saving measure, and establish an instructional material review committee and provide for the appropriate reimbursement of its members.

*By consensus, the subcommittee agreed to delay action on item 6 until the January 19, 2004 meeting of the LESC.*

## **EARLY CHILDHOOD EDUCATION**

7. Amend statute to authorize the Child Development Board to implement a framework for the alignment of early childhood education programs to extend access to high quality early childhood education programs for more pre-kindergarten children in New Mexico.

*On a motion by Senator Nava, seconded by Representative Stewart, the subcommittee voted unanimously to endorse the proposed framework submitted by the Children, Youth and Families Department for item 7 in lieu of proposed legislation.*

#### **PUBLIC SCHOOL TRANSPORTATION**

8. Amend the *Public School Finance Act* to require, by school year 2007-2008, that a total of 25 percent of all buses in a school district be air conditioned, including air conditioning for all buses with wheelchair lifts, and to provide a waiver for districts that can demonstrate climatic conditions that do not necessitate air conditioning on school buses.

#### **SCHOOL SAFETY AND SECURITY**

9. Appropriate funds to PED to provide training and technical assistance for school districts to implement bullying prevention programs, require each local public school district to adopt a bullying prevention policy by August 2005, and require each public school to implement a bullying prevention program by August 2007.

*On a motion by Representative Stewart, seconded by Senator Nava, the subcommittee voted unanimously to endorse items 2, 3, 4, 5, 8, and 9. The subcommittee voted to endorse items 1 and 7 in separate motions and agreed to delay action on item 6 until the January 19<sup>th</sup> LESC meeting. In addition, the subcommittee voted unanimously to endorse a supplemental fund request to provide for additional costs incurred by school districts in administering criterion-referenced tests in FY 04.*

*Representative Miera requested that LESC staff prepare a memo to the LESC detailing the actions taken as a subcommittee of the LESC and that this information be brought before the full committee during the January 19, 2004 meeting for ratification.*

#### **Other Issues for Consideration at the January 19, 2004 LESC Meeting**

#### **CAPITAL OUTLAY**

10. Per recommendations of the Public School Capital Outlay Task Force.

#### **CHARTER SCHOOLS**

11. Per recommendations of the Public School Capital Outlay Task Force.

Representative Miera thanked the presenters and, with the consensus of the committee, adjourned the LESC meeting at 1:30 p.m.

\_\_\_\_\_ Chairperson

\_\_\_\_\_ Date